IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.6810 OF 1996
IN
SECOND APPEAL(ST) NO.13696 OF 1996

1.Yeshwant Ganpat Gaikwad,since deceased through his L.Rs and ors — Applicants
Vs
1. Yeshwant Rambhau Choundhe, since deceased through his heirs and L.Rs. and ors. — Respondents.

Mrs Anita A Agarwal, for the applicants.
Mr S.A.Walimbe for Mr I.M.Khairdi for respndent nos.16A to 16C and 18.

CORAM : D.B.BHOSALE,J.
DATED : 12th September, 2007

P.C.:

1. Heard learned counsel for the parties.

2. By this civil application, the applicants have prayed for condonation of delay in filing the appeal. The respondents have filed the reply affidavit opposing condonation of delay in filing the appeal. I heard learned counsel for the parties.

3. The judgment impugned in the second appeal is dated 16.9.1991 passed in the proceedings arising from the Darkhast (Execution) proceedings. The applicant is a decree holder in whose favour a preliminary decree for redemption of mortgage had been passed by the appropriate court in the suit. The suit was filed in 1954 and the preliminary decree was passed in 1955. By the judgment impugned in the instant second appeal dated 16.9.1991 the first appeal filed by the father of

the applicant was dismissed on the ground of limitation. It appears that there was a delay of one year and three months in filing the Darkhast proceedings after the second appeal was dismissed by this court.

4. The applicant had applied for certified copy of the impugned judgment on 16.9.1991 and he received the same on 11.10.1991. It appears that the review application was filed by the father of the applicant in November,1991, being Review No.700 of 1991. During pendency of the review application it was noticed that there were some errors in the names of parties in the certified copy of the judgment impugned in the review application. The father of the applicant, therefore, sought correction in the decree by filing application no.3 of 1995 and that application was allowed and the decree was corrected on 28.8.1995 and the certified copy of the corrected decree was received by the father of the applicant on 9.10.1995. The second appeal was thereafter filed on 3.6.1996.

5. Mr Walimbe, learned counsel for the respondents, opposed the condonation of delay mainly on the ground that during pendency of the review the father of the applicant died on 4.10.1993 and hence the review was abated and there is no order setting aside

the abatement till this date.In view thereof, he submitted that the delay from the date of death of the father of the applicant till filing of the second appeal has not been explained by the applicant.

6. I perused the application, so also the order impugned in the present appeal and considering the overall facts and circumstances of the case, in my opinion, cause shown by the applicants is sufficient cause to condone the delay. I do not see any malafide or deliberate delay caused in prosecuting the appropriate remedy as a dilatory strategy on the part of the applicants. It is now well settled that length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That is not enough to turn down his plea and to shut the door against against him. If the explanation does not smack of mala fides or it is not put forth as a part of a dilatory strategy, the court must show utmost consideration to the suitor. This is settled by the Supreme Court in N.Balkrishnan Vs M.Krishnamurthy, 1998 (7) SCC 123. In the present

case, I am satisfied that the explanation offered by the applicant does not smack of malafides or it is not put forth as part of a dilatory strategy. I am satisfied that the delay is not deliberate. In the circumstances, this application is allowed. Delay in filing this second appeal stands condoned. The civil application is disposed of.

(D.B.BHOSALE,J.)